

PART I -THE SCHEDULE

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SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 DEFINITIONS

- (a) The term "Act" means the West Valley Demonstration Project Act (P.L. 96-368), unless specifically identified otherwise.
- (b) The term "Records" means both Government-owned and contractor-owned records developed with Government funds.
- (c) The term "Project Premises" means the land as specified in the Cooperative Agreement.
- (d) The term "Project Facilities" means the facilities described in the Cooperative Agreement.
- (e) The term "Additional Facilities" means the facilities described in the Cooperative Agreement.
- (f) The term "NYSERDA" means the New York State Energy Research and Development Authority.
- (g) The term "Center" means the Western New York Nuclear Service Center at West Valley New York.
- (h) The term "WVDP" means the West Valley Demonstration Project.
- (i) The term "Cooperative Agreement" means the Cooperative Agreement entered into between DOE and NYSERDA effective October 1, 1980 as amended September 18, 1981.
- (j) The term "Retained Premises" means the land as specified in the Cooperative Agreement.
- (k) The term "DOE" means the Department of Energy.
- (l) The term "CO" means the Contracting Officer.
- (m) The term "COR" means the Contracting Officer Representative.
- (n) The term "FAR" means the Federal Acquisition Regulation.
- (o) The term "DEAR" means the Department of Energy Acquisition Regulation.
- (p) The term "NEPA" means the National Environmental Policy Act of 1969.
- (q) The term "ISMS" means Integrated Safety Management System.
- (r) The term "ES&H" means Environment, Safety and Health.

H.2 NO THIRD PARTY BENEFICIARIES

This contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating, assigning or conferring any right of action or any other right or benefit upon past, present or future employees of the Contractor, or upon any other third party. This provision is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

H.3 PROGRAMMATIC RISKS AND UNCERTAINTIES

- (a) Completion of the Performance Work Statement (PWS) will require the DOE and the Contractor to successfully resolve, mitigate, eliminate, or avoid various types of risk. Risks to the workers, public, and the environment are managed through the Environment, Safety, Health and Quality Assurance (ESH&QA) Program identified in Section C.1.1.1 and the and Integrated Safety Management (ISM) System

identified in Section C.1.1. Risks to project schedule and cost shall be managed within the Project Control System identified in Section H, Clause H.18. The Contractor shall identify, quantify, and develop mitigation strategies for all project schedule and cost risks into the Risk Management Plan. The Risk Management Plan shall identify and incorporate risk mitigation alternatives and the costs associated with the alternatives in the Risk Management Plan as required by Section H.18 to manage other project and regulatory uncertainties. The Risk Management Plan is a project baseline document and is included as part of the project baseline documents required in Section H, Clause H.18.

- (b) The Contractor shall identify significant project and regulatory uncertainties contained within the PWS that, in its opinion, provide a significant risk to cost and schedule. The Contractor shall describe its approach to eliminate, avoid or mitigate these risks in the Risk Management Plan. The Contractor shall implement the actions described and eliminate, avoid or mitigate the risks during performance of the contract.
- (c) When developing approaches to eliminate, avoid or mitigate risks to cost and schedule, the Contractor shall propose an allocation of risk responsibility to the organization best suited to manage the risk. This can result in the Contractor assuming total responsibility, the DOE assuming total responsibility, or a clearly defined method of sharing risk responsibility between the DOE and the Contractor.

H.4 MODIFICATION AUTHORITY

Notwithstanding any of the other provisions of this Contract, the Contracting Officer (CO) shall be the only individual under this Contract authorized to:

- (a) Accept nonconforming deliverables
- (b) Waive any requirement of this Contract, or
- (c) Modify any term or condition of this Contract.

H.5 RESERVED

H.6 DOE CONTRACT ADMINISTRATION AND OVERSIGHT

- (a) The WVDP presents significant work scope challenges to the Contractor, and makes it imperative that the DOE has a focused approach for providing oversight of Contractor work to provide effective DOE oversight of project work. The DOE oversight will be consistent with their approved Contract Management Plan, and shall include review of Contractor progress reports submitted by the Contractor, direct observation by DOE employees, evaluation of all deliverables, and assessment of work in progress.
- (b) The DOE oversight activities will focus on the safe, efficient cost effective accomplishment of contract work scopes. Oversight will be tailored commensurate with the level of difficulty and degree of importance to DOE of the work being performed. This is a performance based contract and although there will always be a certain level of DOE oversight required, DOE expects that those areas wherein the Contractor is skillfully and successfully meeting Contract requirements will require a much lower degree of oversight than any areas in which the Contractor's performance is viewed as marginal or unsuccessful. The Contractor shall respond to DOE oversight and to concerns, findings and observations as identified by the CO or COR during the conduct of these oversight activities. The areas of oversight

are:

- (1) Project Management Oversight: This includes daily field inspections and the monthly assessment of project status, which will be used to determine and validate project performance.
- (2) Contract Management Oversight: Administration and monitoring of the prime contract will be in accordance with the contract terms and conditions which include, but are not limited to, the oversight required under FAR Subchapter G – Contract Management (FAR Parts 42-51) and its supplements.
- (3) Financial Management Oversight: The DOE will review all budgetary data submitted by the Contractor to be provided into the Integrated Planning, Accountability, and Budgeting System (IPABS). The DOE will monitor and audit Contractor funds management practices and procedures to ensure compliance with applicable regulations and statutes.
- (4) Daily Oversight: The DOE Project Director, Facility Representatives and/or Subject Matter Experts will conduct daily oversight and assessments. The purpose of these contacts will be to assess performance. In addition to this daily involvement, the Contractor shall support:
 - (i) Management walkthroughs conducted in areas of the project or locations where work is ongoing.
 - (ii) Specific tours of buildings during the decontamination activities or just prior to demolition, removal or soil excavations.
 - (iii) Periodic walkthroughs by the regulators, site/facility owner or DOE Headquarters personnel.
 - (iv) Employee concerns elevated to the DOE for evaluation.

H.7 STOP-WORK AND SHUTDOWN AUTHORIZATION

- (a) All Contractor and the Department of Energy (DOE) employees have the right to stop any activity, regardless of who is performing the activity, if continuation of that activity would be considered an imminent health and safety hazard.
- (b) “Imminent Health and Safety Hazard” is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/hazardous chemicals.
- (c) Stop-Work: In the event of an imminent health and safety hazard, identified by facility line management or operators or facility health and safety personnel overseeing facility operations, or other individuals; the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public and to protect DOE facilities and the environment.

In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate Contractor official who will direct the stop work or other actions, as required. Such mitigating action should subsequently be coordinated with the DOE and Contractor management. The suspension or stop-work order should be promptly confirmed in writing from the DOE Contracting Officer.

- (d) Contractor and the DOE employees have the right to recommend a facility shutdown, regardless of who is performing the activity, if continuation of that activity would be considered an imminent danger in relation to

- the Facility Safety Envelope.
- (e) “Imminent Danger in relation to the Facility Safety Envelope” is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) Radiation Exposure, (2) Fire/Explosion, and/or (3) Hazardous Chemical Exposure.
 - (f) Shutdown: In the event of an imminent danger in relation to the Facility Safety Envelope or a non-imminent health and safety hazard identified by facility line management or operators, facility health and safety personnel overseeing facility operations, or other individuals; the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with Contractor management, and the DOE Project Director. Any written direction to suspend operations shall be issued by the Contracting Officer, pursuant to the Section F clause entitled FAR 52.242-15 Stop Work Order.
 - (g) Facility Representatives: DOE personnel designated as Facility Representatives (FR) provide the technical oversight of operations. The FR has the authority to “stop work,” which may apply to the suspension of operations of an entire plant, activity, or job. This stop-work authority will be used for an operation of a facility which is performing work the FR believes:
 - (1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;
 - (2) Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or
 - (3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.
 - (h) The CO may at any time during the performance of this contract issue an order stopping work in whole or in part due to environmental, safety, and health reasons.
 - (i) This clause flows down to all subcontractors at all tiers. Therefore, the Contractor shall insert a clause, modified appropriately to substitute “contractor representatives” for “the Contracting Officer” in all subcontracts.

H.8 KEY PERSONNEL REPLACEMENT

The personnel specified below are hereby considered “Key Personnel” for the purposes of DEAR Clause 952.215-70, Key Personnel, in Section I:

NAME	TITLE
	Project Manager
	Alternate or Deputy Project Manager (if applicable)
	ESH&Q Manager
	High-Hazard Facilities Project Manager
	Waste Management Projects Manager
	Regulatory Strategy and Liaison

All designated Key Personnel, are considered to be essential to the work being performed hereunder. Unless approved in writing by the CO, no Key Personnel position can remain unfilled by a permanent replacement for more than 60 days. Anytime any designated Key Personnel are replaced or removed for any reason under the Contractor’s control within three (3) years of contract award, or within three (3) years of being placed in the position, whichever is later, the Contractor shall forfeit \$500,000 in fee if said Key Personnel is the Project Manager, and \$250,000 in fee for each occurrence with all other Key Personnel.

Likewise, if within three (3) years of contract award, or within three (3) years of being placed in the position, whichever is later, any Key Personnel voluntarily resigns, the Contractor shall forfeit \$ 500,000 in fee if said Key Personnel is the Contractor's Project Manager, and \$250,000 in fee for each occurrence with all other Key Personnel. The Contractor may request, in writing, that the CO waive all or part of these reductions in fee, if special circumstances exist. The CO shall have unilateral discretion to waive or not to waive all or part of a fee reduction.

H.9 CONTRACTOR PROJECT MANAGER

- (a) The Contractor shall designate a Project Manager, and may also designate an alternate Project Manager who will be the Contractor's authorized supervisor(s) for technical and administrative performance of all work performed under the contract. The Project Manager shall be the sole point of contact between the Contractor and the COR under this contract unless an Alternate Project Manager has been designated and approved by DOE. The position of the Project Manager is considered essential to the smooth efficient operation of the contract therefore the position must remain filled at all times. In the event the position is vacated, assumption of the responsibilities by the Alternate Project Manager is acceptable.
- (b) The Contractor's Project Manager shall receive and execute, on behalf of the Contractor, such technical directions as the CO or COR may issue within the terms and conditions of the contract.

H.10 WORKFORCE TRANSITION AND EMPLOYEE HIRING PREFERENCES

- (a) Incumbent Employees Hiring Preferences: The Contractor shall use the transition period to make hiring decisions and to establish the management structures necessary to conduct an employee relations program. In establishing an initial workforce, and through the first six months after Contract award, the Contractor shall give a first preference in hiring for vacancies in non-managerial positions under this Contract to qualified Incumbent Employees (see definition in (a)(1) below). This requirement does not apply to the Contractor's hiring of management staff (i.e., first line supervisors and above).
 - (1) Incumbent employees are the employees who are on the regular payroll of the incumbent contractor, West Valley Environmental Services Company, at the time that the responsibility for contract performance is assumed by the successor contractor.
- (b) After the Workforce Transition Period and continuing throughout the remaining period of performance under this contract, the contractor shall give a preference in hiring for vacancies to individuals who are eligible for the hiring preference contained in the Clause Section I of this contract entitled "DEAR 952.226-74, Displaced Employee Hiring Preference" and with the provisions of any applicable Work Force Restructuring Plan, as amended from time to time regarding the preferential hiring of employees.

H.11 EMPLOYEE COMPENSATION: PAY AND BENEFITS

The Contractor shall fully comply with all requirements of DOE Order 350.1 Change 3 whether or not the requirement is specifically identified herein.

- (a) Contractor Employee Compensation Plan
The Contractor shall submit within 30 days of Contract award, a Contractor Employee Compensation Plan demonstrating how the Contractor will comply with the requirements of this contract. The Contractor Employee Compensation Plan shall be fully compliant with the requirements of DOE Order 350.1 Change 3 and shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce. Once the plan has been approved by DOE no changes may be made to the plan without prior DOE approval.
- (b) Annual Contractor Compensation Increase Plan
The Contractor shall submit annually for DOE approval a Compensation Increase Plan in accordance with DOE Order 350.1 Change 3.
- (c) Total Compensation System
The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system Self-Assessment Plan consistent with FAR 31.205-6, and DEAR 970.3102-05-6, "Compensation for Personal Services" (Total Compensation System), shall be fully compliant with the requirements of DOE Order 350.1 Change 3, and DOE approved standards (e.g. set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall meet the tests of allowability established by and in accordance with FAR 31.205-6 and DEAR 970.3102-05-6, be fully documented, consistently applied and acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Contractor Employee Compensation Plan approved by the Contracting Officer.
- (d) Appraisals of Contractor Performance
DOE will conduct periodic appraisals of Contractor performance with respect to Total Compensation System implementation. Such appraisals will be conducted through either DOE validation of the Contractor's performance self-assessment of its Total Compensation System or third party expert review.
- (e) Reports and Information
The contractor shall provide the Contracting Officer all reports and information required by DOE Order 350.1 Change 3 including but not limited to the following reports and information with respect pay and benefits provided under this contract.
 - (1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
 - (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(ii)(b) and their total cash compensation at the time of contract award, and at the time of any subsequent change to their total cash compensation.
 - (3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation through DOE's Workforce Information System (WFIS),

- Compensation and Benefits module no later than March 1st of each year.
- (4) A performance Self-Assessment of the Total Compensation System implementation and results to include an evaluation of total benefits using the Employee Study and the Employee Benefits Cost Survey Comparison analysis described in (j)(3)(i) and (ii) below.
- (f) Pay and Benefits Programs
The Contractor shall establish pay and benefit programs for employees in accordance with applicable law, any applicable collective bargaining agreement(s), and conditions of this contract, and the following requirements as set forth below; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.
- (g) Pay
(1) The Contractor shall provide equivalent pay and comparable benefits to incumbent employees. Incumbent employees shall remain in their existing pension plans pursuant to pension plan eligibility requirements and applicable law. The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of contract performance. Comparability of the total benefit package shall be determined by the Contracting Officer in his/her sole discretion.
(2) Non-Incumbent Employees are employees who do not meet the definition of an Incumbent Employee as defined in clause H.10 WORKFORCE TRANSITION AND EMPLOYEE HIRING PREFERENCES, and are hired by the Contractor after the contract award date as defined in the contract. All non-incumbent employees hired by the contractor shall receive pay which is competitive with the industry from which the contractor recruits its employees, and in accordance with the terms and conditions of this contract, any applicable collective bargaining agreements(s), and applicable law, including Section 4(c) of the Service Contract Act, as applicable.
- (h) Pension and Other Benefits
The contractor shall provide a total package of benefits to Incumbent Employees, and all other employees who are hired by the contractor in accordance with the terms and conditions of this contract, any applicable collective bargaining agreement(s), and applicable law. The contractor shall comply with all applicable requirements of DOE Order 350.1 Change 3.
- (i) Cash Compensation
(1) The contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the contract:
(i) Any additional compensation system self-assessment data requested by the Contracting Officer that may be needed to validate and approve the Total Compensation System.
(ii) Any proposed major compensation program design changes prior to implementation.
(iii) An Annual Compensation Increase Plan (CIP).
(iv) Individual compensation actions for the Key Personnel, including initial and proposed changes to base salary and/or payments under an Executive Incentive Compensation Plan.
(v) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).
(2) The Contracting Officer's approval of individual compensation actions will be required for key personnel as identified in the Key Personnel Replacement

- clause of this contract, and all other named key personnel, management and senior personnel as identified by the Contracting Officer.
- (3) Severance pay is not reimbursable under this contract for an employee who:
- (i) Voluntarily separates, resigns or retires from employment,
 - (ii) Is offered comparable employment with a successor/replacement contractor,
 - (iii) Is offered comparable employment with a parent or affiliated company, or
 - (iv) Is discharged for cause.
- (4) Service credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.
- (j) Pension and Other Benefit Programs:
- (1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.
 - (2) Cost reimbursement for pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of the contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" as described in (i) and (ii) below.
 - (3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (i) and (ii) below. The studies shall be used by the contractor as part of its performance self assessment described in Paragraph (e)(4) above and in calculating the cost of benefits under existing benefit plans. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.
 - (i) An Employee Benefits Value Study (Ben-Val), every two years, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks for nationally recognized and Contracting Officer approved survey sources and,
 - (ii) An Employee Benefits Cost Study Comparison, annually that analyzes the Contractor's employee benefits cost on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with a Contracting Officer approved broad based national survey.
 - (iii) When net benefit value exceeds the comparator group by more than five percent, the contractor shall submit a corrective action plan to the Contracting Officer for approval.
 - (iv) When the average total benefit per capital cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, when and if required by the Contracting Officer, the

contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll.

- (v) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range as approved by the Contracting Officer.
- (vi) The contractor shall submit the Report on Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of the current calendar year.
- (vii) The contractor may not terminate any benefit plan during the term of the contract without prior approval of the Contracting Officer in writing.
- (viii) Cost reimbursement for Post Retirement Benefits (PRBs) is contingent on DOE approved service eligibility requirements for PRBs that shall be based on a minimum period of continuous employment service not less than five years under a DOE cost-reimbursement contract(s) immediately prior to retirement. Notwithstanding the previous sentence, the costs of PRBs will be reimbursed for individuals meeting the DOE approved eligibility requirements of the applicable approved employee benefit plan. Unless required by Federal or state law, advance funding of PRBs is not allowable.

(g) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs

- (1) The Contractor shall establish or maintain a separate pension plan(s), distinct from any corporate or other pension plan, meeting the requirements of the Internal Revenue Code (IRC) and the Employee Retirement Income Security Act (ERISA) that recognizes service credit earned under the Westinghouse Government Service Group West Valley Pension Plan.
- (2) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with law and regulation.
- (3) Each pension plan shall cover only Contractor employees working under the West Valley Demonstration Project Phase I Decontamination and Decommissioning contract and shall stand alone as a separate pension plan distinct from a Contractor's corporate or other pension plan.
- (4) For each pension plan or portion of a pension plan for which DOE reimburses costs, the Contractor shall provide the Contracting Officer with the following information within nine months of the last day of the current pension plan year.
 - (i) Copies of IRS forms 5500 with schedules; and
 - (ii) Copies of all forms in the 5300 series that document the establishment, amendment, termination, spin-off, or merger of a plan.
- (5) Prior to the adoption of any changes to a pension plan for which DOE reimburses costs, the contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented Contractor Employee Compensation Plan and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

- (i) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value; and,
 - (ii) The Contractor shall obtain the advance written approval of the Contracting Officer for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.
- (6) At contract expiration or termination as a part of the transition to another entity awarded the successor contract, the Contractor shall transfer sponsorship of the site-specific pension plan(s) covering employees under the Westinghouse Government Service Group West Valley Pension Plan, as directed by DOE.
- (7) The Contractor shall not terminate any pension plan without at least 60 days notice to and the approval of the Contracting Officer prior to the scheduled date of plan termination.

H.12 POST-CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS

- (a) If this contract expires, terminates and/or is terminated partially or completely and DOE has not awarded a contract to a new contractor under which a new contractor becomes a sponsor and/or primary sponsor and/or assumes partial or primary responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under this contract has been completed (any one such event may be deemed by the Contracting Officer to be "Contract Completion" for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract Completion:
 - (1) Subject to Paragraph (a)(2) below, and notwithstanding any legal obligations independent of this contract, the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the contractor shall remain a sponsor of the Plans, in accordance with applicable legal requirements.
 - (2) The contractor and DOE shall exercise their best efforts to reach agreement on the contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of "contract completion." However, if the parties have not reached agreement on the contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of "Contract Completion," unless and until such agreement is reached, the contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting

officer, the Contractor's costs will be reimbursed pursuant to applicable contract provisions.

H.13 LABOR RELATIONS

- (a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
- (b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.
 - (1) The contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR Subpart 22.1 and DEAR Subpart 970.2201 and all applicable Federal and state labor relations laws.
 - (2) The contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

H.14 AGE DISCRIMINATION IN EMPLOYMENT

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the Age Discrimination in Employment Act, with any state or local legislation regarding discrimination based on age, and with all applicable regulations there under.

H.15 WORKFORCE RESTRUCTURING

Notwithstanding any other provision in this Contract, when the Contractor determines that a reduction of force is necessary, the Contractor shall notify the Contracting Officer in writing in accordance with DOE Order 350.1 Change 3 and other related guidance. The Contractor shall provide information as directed by the Contracting Officer related to workforce restructuring activities and to enable compliance with Section 3161 of the *National Defense Authorization Act for Fiscal Year 1993* and any other DOE guidance pertaining to employees who may be eligible for provisions of the Act. The Contractor shall supply workforce restructuring related information and reports as needed by DOE. The Contractor shall extend displaced employee hiring preference in accordance with the

H.16 PERSONNEL SECURITY CLEARANCES

- (a) The contractor is required to conduct pre-employment investigative screening of its prospective employees in order to ensure trustworthiness and reliability. The contractor shall provide certification to the Contracting Officer (CO) that an investigative screening has been completed prior to employment. The certification shall include verification of identity, previous employment and education, and the results of credit and law enforcement checks.
- (b) Security Police Officers assigned by the contractor to work at the DOE site will be required to obtain a security clearance. The level of clearance is as follows:

Clearance level

L – confidential

Under this contract, contractor personnel may be required to have an “L” clearance level. **Key Personnel shall be required to have or be able to obtain a “L” clearance level.** The contractor shall seek opportunities to reduce the levels of clearance required for personnel based upon the site conditions.

- (c) This requirement may be waived by the CO for personnel not involved with classified information while clearances are being processed, or for personnel associated with the program for short periods of time, such as consultants.
- (d) The contractor shall retrieve and dispose of badges for employees: 1) who are no longer working on the contract; 2) who no longer require access; 3) when their badge expires; or 4) when the contract expires or is terminated.

H.17 GOVERNMENT FURNISHED SERVICES AND ITEMS

The DOE and the Contractor recognize that implementation of the PWS is dependent upon many activities, including the Government Furnished Services and Items (GFS/I) identified below.

In addition to the items listed in the Property List, Table H-1 provides a description of the GFS/I to be furnished under this contract. DOE is committed to providing effective support to the Contractor throughout the period of Contract performance, and the Contractor may request that DOE consider providing additional GFS/I. To manage the GFS/I to be furnished under the Contract and to evaluate the additional GFS/I that may be required by the Contractor, the Contractor shall submit for DOE approval:

- ° GFS/I Request: a 12-month advance projection of GFS/I to be furnished under the Contract, to be submitted within 60 days of contract award and prior to each fiscal year; and
- ° GFS/I Update (if needed): a quarterly update to the projection of GFS/I to be furnished under the Contract, to be submitted prior to each quarter.

DOE will review the GFS/I Request and GFS/I Update. If DOE can support the additional Contractor-requested GFS/I, DOE will notify the Contractor within 30 days that the additional Contractor-requested GFS/I can be provided, and will provide the Contractor details regarding the DOE action(s). The supported GFS/I will be added to Table H.1, Detailed Description of Government Furnished Services and Items, as a DOE commitment

to the Contractor.

If DOE cannot support a Contractor request, DOE will notify the Contractor within 30 days that the requested GFS/I cannot be provided, and there will be no DOE commitment to the Contractor to furnish the GFS/I.

For the additional Contractor-requested GFS/I, DOE will use its best efforts to meet additional GFS/I commitments to the Contractor. However, in the event that DOE is unable, for any reason, to provide the Contractor with its requested additional GFS/I, the Contractor remains fully and solely responsible for obtaining the needed services and/or information in a timely manner and without any further recourse against DOE.

Table H.1 DETAILED DESCRIPTION OF GOVERNMENT FURNISHED SERVICES AND ITEMS

Scope	Requirement	GFS/I
The Contractor shall support DOE EM by performing infrastructure support as described in Section C, PWS.	DOE shall ensure Government controlled data systems are available for Contractor access as needed to provide infrastructure activities	DOE will ensure the following systems are available to the Contractor throughout the period of performance of this contract: Integrated Planning Accountability and Budget System (IPABS) Facility Information Management System (FIMS) Computerized Accident/Incident Reporting System (CAIRS) Non-Compliance Tracking System (NTS) database Occurrence Reporting and Processing System (ORPS) Foreign Access Central Tracking System (FACTS) database Federal Telephone System Access Condition Assessment Information System (CAIS) Work Force Information System (WFIS)

The Contractor shall submit documentation, reports, etc., to DOE during performance of the activities in the PWS.	DOE shall provide comments and/or approval of documentation, reports, etc.	DOE will use its best efforts to provide comments and/or approval of documentation, reports, etc., in a timely manner. Typical response times include: Project Baseline: 30 business days Baseline Changes: 30 business days Regulatory Submittals (with the exception of the RCRA Part B Permit Application): 30 business days General Correspondence: 5 business days Project Plans: 20 business days The above time frames do not apply to documents or submittals that require review, concurrence, or approval at any level other than local WVDP personnel.
The Contractor shall store, characterize, process, package, ship and dispose of waste in accordance with applicable laws, regulations and DOE directives.	DOE shall provide disposal rates and requirements for waste disposal using an Envirocare contract or the Nevada Test Site (NTS).	DOE will make the Envirocare contract available for use as necessary by the Contractor. DOE will provide the NTS estimated disposal rates annually by September 30.
The Contractor shall maintain, safeguard, and disposition records acquired from a predecessor contractor in accordance with applicable federal laws, regulations and DOE Directives as described in <i>Records Management</i> in C.1.3.3.	DOE shall review/inspect the Government Records before release to the successor contractor.	Records acquired from a predecessor contractor(s) for the performance of work under this contract are being provided as Government Furnished Items.

Note: The review/inspection of records from a predecessor contractor, prior to being released to a successor contractor will typically take place during the contract close-out phase to ensure records have been managed appropriately and can be turned over to a successor contractor. The listing of records as Government-Furnished Services and Items (GFS&I) does not make records Government "Property" in the sense that records cannot be donated or given away under Property regulations.

H.18 PROJECT CONTROL SYSTEMS AND REPORTING REQUIREMENTS

A. Project Control System

1. The contractor shall establish, maintain and use a project control system that accurately reflects the project status relative to cost and schedule performance, and tracks changes to the baseline. The project control system shall reflect the project status relative to cost and schedule performance, and tracks changes to the baseline. This system shall be fully integrated with the financial accounting system to ensure consistent reporting of costs. The contractor shall maintain a project control system in accordance with the following requirements:
 - i. Attachment 1 to DOE Order 413.3A, Change 1, Program and Project Management for the Acquisition of Capital Assets, November 17, 2008, and its implementing manual, DOE Manual 413.3-1
 - ii. American National Standards Institute, Earned Value Management System

- Guidelines ANSI/EIA-748-1998
- iii. Code of Federal Regulations, 48 C.F.R. Subpart 34.2—Earned Value Management System
 - iv. Work Breakdown Structures, MIL-HDBK-881A
 - v. Data Item Description, DI-MGMT-81334C, Contract Work Breakdown Structure
 - vi. Data Item Description, DI-MGMT-81650, Integrated Master Schedule (IMS)
 - vii. Data Item Description, DI-MGMT-81466A, Contract Performance Report (CPR)
 - viii. Integrated Planning, Accountability, and Budgeting System Information Systems (IPABS-IS) Data Requirements, February 16, 1999
 - ix. Integrated Planning, Accountability, and Budgeting System (IPABS) Handbook, February 16, 1999
 - x. HQ Baseline Change Control Charter, Office of Environmental Management, Rev. 0, June 23, 1999
 - xi. DOE G 430.1-1, Cost Estimating Guide
 - xii. Primavera Project Manager most current version, for scheduling activities to ensure standardization as required by DOE-EM and to allow integration with the EM Integrated Schedule (IS).
 - xiii. Costs incurred in performance of this contract shall be reported in compliance with the Environmental Cost Element Structure (ECES), ASTM International Designation E: 2150-04 and in a format ready for incorporation into DOE's Environmental Cost Analysis System (ECAS) database.
2. The contractor shall provide the Contracting Officer (CO) with a detailed written Earned Value Management System Description (EVMSD) of the proposed project control system for review and approval within 60 days after award of this contract. The system description shall be in compliance with items (i) through (vii) of the requirements noted in section one. Cost effective, graded application of controls will be a critical factor in determining acceptability of the proposed system. The existing project control system may be used until such time as a replacement system is approved. The replacement system would be one that incorporates the changes required from actions and recommendations out of the Independent Project Review (IPR) and the EVMS certification. The contractor shall evaluate the usefulness and cost effectiveness of the existing system against items (i) through (vii) of the requirements noted section one and its relationship to the other site information systems. The evaluation shall also identify any enhancements or modifications that are necessary to bring the existing system into compliance with the requirements of items (i) through (vii) and the contract, prior to the takeover date. EM-53 shall perform an IPR at that time to determine project readiness to proceed.
 3. The Department of Energy (DOE) Contracting Officer Representative (COR) or designated representatives will conduct a compliance review of the contractor's proposed project control system to determine if the EVMSD and procedures meet the intent of this contract clause within 30 days after the Contractor's submission of their EVMSD. The Contractor shall provide the CO, or designated authorized representatives, access to any and all information and documents comprising the Contractor's project control and reporting system.

B. Baseline Development and Cost Collection

1. The contractor shall develop and submit for approval by the CO, a baseline consistent with the terms and conditions of this contract and its proposal within six months after contract award date. The baseline shall be developed in accordance with items (i) through (vii) of the requirements noted in section one and include the entire baseline with a detailed development of the scope, cost, and schedule for the

scope identified in the Performance Work Statement (PWS). The baseline shall include key performance milestones (regulatory, DOE, and incentive). The detailed baseline must match the PWS and align with the Target Cost and Fee funding profile. For work scope beyond the term of the contract, summary planning packages and rough order of magnitude estimates may be used for the balance of the life cycle scope in accordance with items (i) through (vii) of the requirements noted section one. The Work Breakdown Structure (WBS) for the work scope shall provide the basis for all project control system components, including estimating, scheduling, budgeting, performing, managing, and reporting, as required under this contract. The contractor shall identify the WBS elements that will roll up to DOE's Project Baseline Summary (PBS) levels.

2. The Contractor shall develop a Risk Management Plan (RMP) in accordance with DOE Order 413.3A, Change 1, that identifies internal and external risks to achieve the project baseline including programmatic, operational, legislative, regulatory, institutional, and other requirements, constraints, and assumptions that may affect technical, schedule, and cost baselines. The RMP will define, analyze and provide a quantitative assessment of potential technical, performance, cost and schedule risks, as well as document actions taken and planned to mitigate potential impacts to scope execution. The Contractor shall provide its assessment of the impact of these uncertainties on project execution. If, in the Contractor's opinion, the risks are significant, the Contractor shall describe its approach to eliminate, avoid, or mitigate (risk handling) the risks. When developing approaches to eliminate, avoid or mitigate risks, the Contractor shall propose an allocation of risk responsibility to the organization best suited to manage the risk. The RMP shall be submitted with the Contract Performance Baseline and updated quarterly.
3. Cost estimates shall be integrated with the WBS and estimating methodologies used shall be consistent with items (i) through (vii) of the requirements noted in section one. Costs shall be discernable by direct, indirect and fee. The project control system must maintain capability to provide Total Estimated Cost, Total Project Cost, Estimate-to-Complete, and Estimate-at-Completion, along with tracking of the Target Cost and Target Schedule. The cost estimate format elements shall be compatible with ECES, ASTM International Designation E: 2150-04.
4. Schedules shall be developed (with the current version of Primavera provided by the DOE-EM) that integrate with the Corporate WBS, DOE-EM Enterprise Project Control System (EPCS) and shall be consistent with items (i) through (vii) of the requirements noted in section one. The EPCS guidelines define the minimum set of criteria (formats, Enterprise Project Structure, activity and project codes, user defined fields, database location and communication processes, etc.) required to integrate contractor schedules into the DOE-EM enterprise system. All project work scope shall be included regardless of funding source. Each Project will have assigned duration based on work scope. Activity logic links shall depict all work scope constraints and decision points and shall be integrated into a total project network schedule. The project schedule shall clearly depict critical path activities and milestones. Activities shall be resource loaded at the lowest practical level of the WBS, but at a minimum at the work package level at least two levels below the PBS to develop time-phased budgets that are integrated with the schedule. Labor resources shall be loaded based upon a staffing analysis. EVM analysis will be performed at the control account level with the ability to total to the project level. Reporting may be specified at lower levels for complicated, high cost or high-risk items. EM will provide Primavera licenses and maintenance fees associated with

the license.

5. The Contractor shall analyze DOE proposed or directed funding changes for its impact on technical, schedule, and cost elements of the baseline, along with potential impacts to the total estimated cost and schedule of the contract. Any Contractor requested changes or DOE directed changes should be addressed through the established change control process. The process will not, in and of itself, have the authority to change the total estimated cost or schedule of the contract, nor is agreement or acceptance by DOE of a change through the change control process sufficient to support a concurrent contract change. Only the Contracting Officer acting within the capacity of their warrant has the ability to add, alter, or eliminate the terms and conditions of the contract
6. Any contractor requested changes or DOE directed changes should be addressed through the established change control process detailed in Section D of this clause entitled "Baseline Change Management." This process will not, in and of itself, have the authority to change the Project Target cost and schedule of the contract, nor is agreement or acceptance by DOE of a change through the change control process sufficient to support a concurrent contract change. Only the Contracting Officer acting within the capacity of their warrant has the ability to add, alter, or eliminate the terms and conditions of the contract.
7. Prior to the release of funds for each fiscal year, DOE will analyze the baseline for that fiscal year. By June 30 each year, DOE will provide an estimate of any budget restrictions or specific technical or schedule guidance for the upcoming fiscal years through the remainder of the project. The contractor shall prepare a project performance forecast for all upcoming fiscal years from the approved project baseline. The contractor shall submit budget allocations to each PBS for the upcoming fiscal year with a focus on differences to the work activities described in the Project Baseline for that specific year. This deliverable is known as the Project Execution Plan, as derived from the ICP LCB and shall be approved by the CO. The Contractor shall prepare a project performance forecast three months prior to the end of the fiscal year for all remaining fiscal years from the approved project baseline
8. The contractor shall provide on a monthly basis Contract Performance Report (CPR) formats 1 through 5. The reports shall be consistent with item (vii) of the requirements noted in section one and the contractors EVMSD. The CPR data shall accurately reflect how work is being planned, performed, and measured and shall be consistent with the actual contract status. Format 5 Variance Analyses are required for Control Accounts (CA) with current or cumulative cost or schedule variances greater than positive or negative 10%. The preparation of CPRs formats 1 through 5 are required to be developed and delivered to the CO by the twentieth day of each month with the earned value analysis of the prior month (e.g. November results reported by the twentieth day of December). The CPR formats 1 through 5 shall be delivered as MSExcel (XLS) files.
9. The contractor shall evaluate the Estimate-at-Completion by determining the Latest Revised Estimate (LRE) for each CA on a monthly basis to ensure that it is consistent with observed trends in performance, emerging or resolved issues, and changes in the assessment of project risk. The reports shall be consistent with item (vii) of the requirements noted in section one and the contractors EVMSD. The results of the evaluation shall be transmitted to the CO.
10. All actual direct costs incurred for resources applied in the performance of work shall be recorded on a timely basis each month. Actual costs incurred must be recorded in the same accounting period that performance is measured and

recorded. An accrual log shall be maintained and used to indicate delivery of materials where invoices have not been received and paid. Accruals for received and not invoiced materials may be entered in the current ACWP field of the earned value system. Any indirect costs shall also be collected and appropriately allocated to the PBSs per the approved Cost Accounting Standard Disclosure Statement.

11. Costs shall be collected at the charge number level, with the ability to be summed through the WBS, PBS, and by major contractor functional organization. Mischarges on time cards or other administrative or accounting errors shall be corrected prior to invoicing the Government.

C. Project Reporting

1. The contractor shall provide on a monthly basis Contract Performance Report (CPR) formats 1 through 5. The reports shall be consistent with item (vii) of the requirements noted in section one and the contractors EVMSD. The CPR data shall accurately reflect how work is being planned, performed, and measured and shall be consistent with the actual contract status. Format 5 Variance Analyses are required for Control Accounts (CA) with current or cumulative cost or schedule variances greater than positive or negative 10%. The preparation of CPRs formats 1 through 5 are required to be developed and delivered to the CO by the fifteenth of each month with the earned value analysis of the prior month (e.g. November results reported by the twentieth day of December). The CPR formats 1 through 5 shall be delivered as MSeXcel (XLS) files.
2. Semiannual Critical Analysis (SACA): Semiannually, the contractor shall prepare and submit a comprehensive report that critically analyzes the overall status of the WVDP Phase 1 Decommissioning – Facility Disposition work as well as all applicable key performance measures defined in the Award Fee Evaluation Plan that will be prepared and provided to the contractor after award. This report shall include overall narrative summaries, analysis of schedule trends and project float, critical path performance, analysis of critical manpower skills of other resources, budget and funding figures, and project risk updates. In the second semiannual SACA submittal, the contractor may propose revisions or updates to the key performance measures in the Award Fee Evaluation Plan for CO review and approval. The analysis of funds expenditure shall include a report of monthly and cumulative costs of performance by cost element in a format compatible with ECES and ready for incorporation into the ECAS database by DOE.
3. Plans and reports shall be prepared in such a manner as to provide for consistency with the contract PWS, the ICP LCB and the approved WBS. The contractor's reporting system shall be able to provide for the following at the CA level:
 - i. Timely incorporation of contractual changes affecting estimated cost and schedule;
 - ii. Reconciliation of estimated costs for those elements of the WBS with current performance measurement budgets in terms of changes to the authorized work and internal re-planning;
 - iii. Changes to records pertaining to work performed that will change previously reported costs for correction of errors; and
 - iv. Revisions to the contract estimated costs for DOE-directed changes to the contractual effort.
4. The contractor shall provide the CO, or designated authorized representatives, full access to any and all information and documents comprising the contractor's project control and reporting system, including read-only access to associated electronic information systems.

5. The contractor shall include graded reporting requirements in all subcontracts adequate to fairly evaluate performance and support the contractor reporting requirements.

D. Baseline Change Management

1. The baseline is the source document for all project control and baseline change management. The processes for managing and administering changes to all elements of the baseline shall be timely, formal, and documented. Baseline changes may be proposed in accordance with the Federal Acquisition Regulation (FAR) Clause 52.243-2 "Changes-Cost Reimbursement" or other clauses of this contract. Baseline changes shall be proposed when:
 - i. Necessitated by project delays, events or other impacts outside the control of the Contractor that result in an impact to the Contractor's ability to meet the overall target cost and schedule and target fee structure;
 - ii. The parties have negotiated an equitable adjustment in accordance with the section I clause entitled, "Changes - Cost Reimbursement" or other clauses of this contract.

NOTE: Cost and schedule variances do not constitute or necessitate a baseline change. Provided that the change does not affect total cost or schedule for the reasons stated above, the baseline change control thresholds for scope, cost and schedule shall be the lesser of the following:

- i. DOE Headquarters \$10,000,000 or 20% of the PBS annually
 - ii. Local DOE \$5,000,000 or 10% of the PBS annually
 - iii. Contractor Up to the local DOE Level
 - iv. Additional work scope can only be authorized by the CO regardless of the threshold level.
2. The approval authority for any change to the Target Schedule or Target Cost shall be the Assistant Secretary for Environmental Management. The Assistant Secretary for Environmental Management shall approve any change to Target Cost that would require additional funding.
3. Change control shall be submitted to the CO for all items in D.1 above. Change control that does not affect these items but is a result of scheduling within major milestones shall be provided to the CO for notification upon contractor internal approval. Only the CO can authorize work scope changes.
4. In some circumstances the contractor might exceed authorized budget levels for a WBS element when a baseline change is not warranted, such as for cost overruns; however, the contractor shall not exceed the authorized funding level by PBS or as identified by DOE. The monthly Estimate-to-Complete Analysis shall track and manage changes in funding at each CA level.
5. The CO will establish specific change control time frames for consideration and approval. Each change control threshold level shall accommodate emergency changes. Retroactive changes that affect schedule and cost performance data are not allowed except to correct administrative errors. A record of all approved changes shall be maintained through the life of the project. Change control records shall maintain a clear distinction between approved changes in funding and baseline changes. Ownership of Change Control Board records and Project Management records resides with DOE.
6. Any changes to cost, schedule or fee shall be executed only through a contract modification by the Contracting Officer pursuant to the contract terms and conditions. Baseline changes will not imply the need for changes to cost, schedule or fee.

H.19 STAKEHOLDER INTERACTION

The Contractor shall, in addition to its own employees, engage in cooperative interactions through and with these organizations, including but not limited to:

U.S. Nuclear Regulatory Commission (NRC)
U.S. Environmental Protection Agency (USEPA)
New York State Department of Environmental Conservation (NYSDEC)
New York State Energy Research and Development Authority (NYSERDA)
Occupational Safety and Health Administration (OSHA)
Department of Energy Environmental Management Consolidated Business Center (EMCBC)
Department of Energy Headquarters (DOE-HQ)
Congressional Staff
U.S. Department of Labor (DOL)
Inspector General (IG)
U.S. Attorney's Office
Government Accountability Office (GAO)
Defense Contract Audit Agency (DCAA)
West Valley Citizens Task Force
Coalition on West Valley Nuclear Wastes
Seneca Nation of Indians
Local Emergency Responders and Law Enforcement
Other State and Federal Agencies, as applicable.

H.20 PAPERLESS DIRECTIVE PROCESSING SYSTEM

- (a) The Contractor, in addition to complying with applicable laws, rules, and other regulations, shall comply with those DOE Orders and other Directives applicable to contractors, with the applicable departmental policies, plans, programs, and management directives, and with all changes to assigned work as agreed to by the Contractor and the CO or designee.
- (b) DOE has developed a list of applicable DOE Directives, and is appended to the Contract as Section J, Attachment J-2. The Contractor shall comply with the directives identified in such list. The Contractor shall make no claim, including a claim for equitable adjustment under the Changes clauses of this contract, for additional costs, fee or extension of time of performance relating to compliance with the directives in such list.
- (c) The Baseline List of Directives Applicable to the Contract will be revised and issued, by the DOE CO, as a contract modification, as necessary. The CO may direct the Contractor to comply with additional DOE directives and local directives and revisions thereto, as follows:
 - (1) Pursuant to and in accordance with the "Changes" clause of the contract with respect to changes in directives within the general scope of this contract,
 - (2) Pursuant to any Environment, Safety, and Health provisions of this contract, and in accordance with the Changes clause of this contract with respect to changes in directives involving safety, environment, health and quality.
- (d) At least once a month, the Contractor will extract orders, directives, manuals, technical orders, guides etc directly from the DOE Paperless Directive System utilizing the Internet as notification of their availability by DOE electronic prompting.

Copies of DOE directives may be obtained without charge from the CO or by citing the number of this contract in a written request sent to the following address:

US DOE
Distribution Section
Forrestal Building
Washington, DC 20585

- (e) The CO and his/her representative(s) expressly authorized in writing to do so are the only government officials authorized to provide explanations as to the applicability of directives. The CO is the only Government Official authorized to resolve conflicting requirements involving directives and their applicability to the Contract.
- (f) Upon extraction of new or revised orders, directives, manuals, technical orders, guides etc the Contractor shall review it for consistency with the other terms of this contract and for impacts on funding, manpower and other provisions of the contract. If the Contractor considers the document to be consistent with the other terms of this contract and it can be implemented within existing funds, manpower, and other provisions of the contract and implementation is not anticipated to require an increase to the contract value, or to have a negative impact on the contract schedule, or other obligations of the Contractor, the Contractor shall establish an implementation schedule, and so advise DOE within 30 calendar days of receipt. In the event the Contractor considers the directive to be inconsistent with the other terms of this contract or the requirements of the directive cannot be implemented without an increase to the contract value and within existing funding, manpower, and other provisions of the contract, the Contractor shall so advise the Contracting Officer (CO) within 30 calendar days of receipt. Such notice shall include the basis for the claimed inconsistency the projected cost of implementation, including an explanation of the need for a contract increase, and identification in excess of current funding, manpower, and other provisions of the contract. After evaluation of the Contractor's position, the CO shall issue direction to the Contractor, pursuant to the clause entitled "Changes" concerning appropriate implementation of the directive.
- (g) The Contractor will, at least quarterly, notify DOE of those Directives extracted. The Contractor cognizant personnel will review these Directives and recommend for concurrence disposition of the Directives to DOE-WV.
- (h) Upon agreement between the Contractor and DOE, the Directive will be implemented as outlined in a Contractor Management Summary or Implementation Plan, whichever is appropriate, and the Directive added to the Baseline List of Directives Applicable to the Contractor and issued by the CO. The same process will be utilized for deletion of Directives.
- (i) The Contractor shall incorporate the substance of this clause with respect to applicable directives, excluding any reference to the Changes clause, in subcontracts for performance of work at the site and as directed by the CO.

H.21 PRIVACY ACT SYSTEMS OF RECORDS

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the clause in Section I, FAR 52.224-2, Privacy Act:

DOE System Title/Number

DOE-5	Personnel Records of Former Contractor Employees
DOE-10	Energy Employees Occupational Illness Compensation Program Act Files
DOE-13	Payroll and Leave Records
DOE-23	Property Accountability System
DOE-28	General Training Records
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Reports
DOE-43	Personnel Security Clearance Files
DOE-51	Employee and Visitor Access Control Records
DOE-52	Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites
DOE-55	FOIA/PA Requests for Records
DOE-88	Epidemiologic and other Health Studies, Surveys and Surveillances

The above list shall be revised from time to time by the CO as may be necessary to keep it current. Such changes will be formally incorporated by modification.

The Contractor shall prepare/revise and submit for DOE Privacy Act Officer approval, in accordance with Section I, FAR 52.224-2, Privacy Act, and DOE O 206.1, DOE Privacy Program: (1) a list of the systems of records that fall under the Privacy Act; (2) the design, development, or operation work that will be performed; and (3) the responsibility of each system. Systems currently covered by the Privacy Act can be found in the Federal Register at the following web site:

<http://management.energy.gov/documents/FinalPASORNCompilation.1.8.09.pdf>.

H.22 PRICE ANDERSON AMENDMENTS ACT NONCOMPLIANCE

The Contractor shall maintain an internal Price Anderson Amendments Act (PAAA) noncompliance identification, tracking, reporting and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall be accountable for ensuring that subcontractors adhere to the PAAA requirements.

H.23 DISPOSITION OF INTELLECTUAL PROPERTY-FAILURE TO COMPLETE

- (a) In the event of a termination for default or termination for convenience, DOE may take possession of all technical information, including limited rights data and data obtained from subcontractors, licensors, and licensees, necessary for the design, construction, operation, cleanup and closure of the facility, subject to the Rights in Data -Facilities clause of this contract. Technical information includes, but is not limited to, designs, operation manuals, flowcharts, software, work progress reports, and any other information necessary for the design, construction, operation, cleanup and closure of the facility.
- (b) Upon request, the Contractor agrees to grant to the Government an irrevocable, nonexclusive, paid-up license in and to any intellectual property, including any

technical information and limited rights data, which are owned or controlled by the Contractor, at any time through completion or termination of this contract and which are necessary for the continued design, construction, operation, cleanup and closure of the facility, (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license to future contractors for the design, construction, operation, cleanup and closure of the facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity, or scope of, or title to, any rights or patents or other intellectual property herein licensed.

- (c) In addition, the Contractor will take all necessary steps to assign permits, authorizations, and any licenses in any third party intellectual property for the design, construction, cleanup and closure of the facility to DOE or such other third party as DOE may designate.
- (d) The obligations under this clause are not dependent upon any payments by the Government. The obligations arise immediately upon the request of the CO.

H.24 COMPLIANCE WITH FIPS PUB 201

This contract involves the acquisition of hardware, software, or services related to physical access to Federal premises or electronic authentication or access control to a Federal agency's computer systems and electronic infrastructure. Any such hardware, software, or services delivered under this contract shall comply with FIPS Pub 201, and FIPS Pub 201 shall take precedence over any conflicting performance requirement of this contract. Should the Contractor find that the Performance Work Statement or specifications of this contract do not conform to FIPS Pub 201, it shall notify the Contracting Officer of such nonconformance and shall act in accordance with instructions of the Contracting Officer.

H.25 INCORPORATION OF REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFEROR

The representations, certifications, and other statements of offeror, completed by the Contractor, and dated _____(TBD)_____, are hereby incorporated by reference.

H.26 STANDARD INSURANCE REQUIREMENTS

In accordance with FAR clause 52.228-7, entitled "Insurance -Liability to Third Persons," the following kinds and minimum amounts of insurance are required during the performance of this contract:

- (a) Worker's compensation and employer's liability insurance:
 - (1) The amount required by the state in which work is performed under applicable workers' compensation and occupational disease statutes.
 - (2) Employer's liability insurance in the amount of \$100,000.
- (b) General liability insurance. Bodily injury liability coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.
- (c) Automobile liability insurance. Coverage shall be provided on a comprehensive basis. It shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performance of this contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage.
- (d) The amount of liability coverage on other policies shall be commensurate with any

legal requirements of the state and locality, plus sufficient to meet normal and customary claims.

H.27 WAGE DETERMINATION RATES

In the performance of this contract, the Contractor shall comply with the requirements of Service Contract Act Wage Determination No. 2005-2371 in Section J, Attachment J-5 and Davis-Bacon General Decision No. NY100008 in Section J, Attachment J-4. Revised wage determinations shall be required from the Department of Labor and incorporated into this contract at least once every two (2) years but not more often than yearly.

H.28 LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2010)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence Congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to members of congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.29 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS - INTENT OF CONGRESS

It is the intent of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made

H.30 ALLOCATION OF LIABILITY FOR FINES AND PENALTIES TO RESPONSIBLE PARTY

- (a) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental, safety, health or quality requirements shall be borne by the party that causes the violation (contractor's, subcontractors, teaming partners, joint ventures, etc.). This clause resolves liability for fines and penalties though the cognizant regulatory authority may assess such fines or penalties upon either party or both parties without regard to the allocation of responsibility or liability under this contract. The allocation of liability for such fine or penalty is effective regardless of which party signs permit application, manifest, reports or other required documents, is a permittee, or is named subject of an enforcement action or assessment of a fine or penalty.
- (b) Regardless of which party to this contract is the named subject (Contractor or DOE) of an enforcement action for compliance with the environmental, safety, and health, or quality requirements by the cognizant regulatory authority, liability for payment of any fine or penalty as a result of Contractor action or inactions, is the responsibility of the Contractor and not reimbursable under this contract. Any fines and penalties incurred by DOE as a result of Contractor actions or inactions will be reimbursed to DOE and are also unallowable. Cost of fines and penalties resulting from violations of, or the Contractor failure to comply to comply with federal, state, local, or foreign laws and regulations are unallowable except under the conditions stipulated at FAR 31.205-15.

H.31 PERMITS, APPLICATIONS, LICENSES, AND OTHER REGULATORY DOCUMENTS

- (a) Consistent with the FAR clause 52.236-7 "Permits and Responsibilities," in Section I, the Contractor must obtain any licenses, permits, other approvals or authorizations for conducting all activities under the contract. The Contractor shall be responsible for becoming a party to all regulatory compliance agreements, permits, licenses, and certifications associated with the scope under this contract including those previously executed. The Contractor is responsible for complying with all permits, licenses, certifications, authorizations and approvals from federal, state, and local regulatory agencies that are necessary for all activities under this contract (hereinafter referred to collectively as "permits"). Section C, Attachment C-6, describes permits currently held by WVDP. Except as specifically provided in this section and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the sole permittee/licensee for any such permits/licenses required for its activities. The Contractor must take all appropriate actions to obtain transfer of existing permits/licenses, and DOE will use all reasonable means to facilitate transfer of existing permits/licenses. If DOE determines it is appropriate or if DOE is required by cognizant regulatory authority to sign permit/licenses applications, DOE may elect to sign as co-operator or similar designation, but the Contractor (or, if applicable, its subcontractors) must also sign as operator or similar designation reflecting its responsibility under the permit/licenses unless DOE waives this requirement in writing.
- (b) Unless otherwise authorized by the Contracting Officer, the Contractor must submit to DOE for review and comment all permit applications, reports or other documents required to be submitted to cognizant regulatory authorities. Such draft documents must be provided to DOE within a time frame, identified by DOE, sufficient to allow DOE substantive review and comment; and DOE will perform such substantive review and comment within such time frame. When providing DOE with documents that are to be signed or co-signed by DOE, the Contractor will accompany such documents with a certification statement, signed by the appropriate Contractor corporate officer, attesting to DOE that the document has been prepared in accordance with all applicable requirements and the information is, to the best of its knowledge and belief, true, accurate, and complete.
- (c) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.
- (d) In the event of termination or expiration of this contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor, or DOE will accept responsibility as operator for such permits, and the Contractor shall be relieved of all future liability and responsibility resulting from the acts or omissions of the successor Contractor or DOE.

H.32 RESERVED

H.33 LEGAL MANAGEMENT PLAN

- (a) The Contractor shall comply with all requirements of 10 CFR 719. As part of that compliance, the Contractor shall submit a Legal Management Plan in accordance

- with 10 CFR 719, and include the item set forth in 10 CFR 719.10 to the Contracting Officer for approval within sixty (60) days of contract award.
- (b) The Plan shall describe the Contractor's practices for managing legal costs and matters for which it procures the services of retained legal counsel. In doing so, the plan shall describe the matters in-house counsel will perform as well as anticipates performing throughout the life of the contract. The Contractor should not retain outside counsel for matters that can be performed by in-house counsel. Within this plan, the Contractor will promise to compare rates of retained legal counsel with the rates of firms in the Greater Buffalo area. Once approved by the Contracting Officer, the Plan, as well as applicable regulations and contract provisions, forms the basis for approvals by the Contracting Officer to reimburse litigation and other legal expenses performed by retained legal counsel. The Plan may be revised from time to time to conform to legal management rules or policies established or adopted by the Department of Energy.

H.34 AWARD FEE PLAN

- (a) The determination of award fee shall be based upon an award fee plan, including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area. The award fee plan will be unilaterally established by the Government. A copy of the plan shall be provided to the Contractor within 30 calendar days after contract transition
- (b) The award fee plan will set forth the evaluation period and the criteria upon which the Contractor will be evaluated for performance relating to any (1) technical requirements if appropriate, (2) management requirements, and (3) cost functions as selected for evaluation. The Contractor may submit a self-evaluation of performance for each period under consideration. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government, the self-evaluation which is to be received within 15 days after the end of the period being evaluated will be given such consideration as the Fee Determination Official shall find appropriate.
- (c) The award fee plan may be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the Contractor 30 calendar days prior to the start of the evaluation period to which the change will apply.

H.35 COOPERATION WITH OTHER SITE CONTRACTORS

- (a) The DOE may require that activities not included in the Performance Work Statement (PWS) be performed on or for the WVDP by other contractors or entities. DOE can require performance of any activity not covered by the PWS however the activities most likely to be performed include decontamination, demolition, and waste management activities. The Contractor is required to support and facilitate the performance of these activities as requested by the Contracting Officer or the Contracting Officers Representative, regardless of the performer. The types of support DOE anticipates will be necessary includes but is not limited to provision and coordination of Integrated Safety Management System (ISMS) oversight, infrastructure services, site and facility access, documents, data and information and access to systems.
- (b) The Contractor is expected to support, cooperate and facilitate to the degree

directed by DOE all contractors and entities authorized to perform work at the WVDP. Effective support and cooperation will require open and frequent communication between the Contractor other contractors, entities and DOE to ensure that work schedules are coordinated and/or adapted to accommodate all of the work that needs to be accomplished regardless of performer, that data and information necessary to perform work is shared in a timely manner, and that requests for support services are promptly responded to. Cooperation requires that the Contractor work closely with other contractors and entities to resolve interface and communication issues, establish schedules that accommodate all work being performed regardless of performer, provide and disseminate safety information and requirements, establish work groups, participate in meetings, provide access to technical data and information, contract schedules and milestone data; discuss technical matters related to the WVDP, provide access to Contractor facilities or areas. The Contractor shall ensure that its activities in support of the other contractors and entities are fully coordinated with all parties including DOE.

- (c) None of the parties, (Contractor, other contractors, entities) will be allowed to deliberately interfere, or impede the performance of work by another party authorized to perform work on site. Deliberate interference is considered to be any action or inaction designed or intended to interfere with the ability of any party to pursue and complete work as scheduled and planned. Interference includes but is not limited to changing schedules without prior notice and coordination, omitting necessary information and/or details that materially affect any parties ability to plan or perform work, failing to turn over facilities on schedule or in the anticipated condition, failure to provide prompt accurate issue notification at the appropriate level, and failure to provide prompt notification to DOE of any actual or suspected instances of deliberate interference by any party. A determination by DOE that any party intentionally interfered with another parties ability to perform required work will result in an assessment against the culpable party in accordance with the terms and conditions of the applicable contract or agreement relative to that parties work. Under this contract intentional interference with the performance of work by another contractor or entity by the Contractor may result in a reduction in overall award fee commensurate with the Fee Determining Official's assessment of the severity of the interference.
- (d) The CO has the authority to direct any party to cease performance of any work that interferes with the work of any other party or that is considered a detriment to the ability of DOE to accomplish necessary work.
- (e) The Contractor shall provide to DOE and all parties performing work on site a schedule that identifies and integrates all work to be performed regardless of performer. The schedule shall be updated whenever a change is made and provided to all parties. Failure to reach agreement among the parties will be elevated in writing to the DOE COR/CO for resolution.

H.36 COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (IPV6) IN ACQUIRING INFORMATION TECHNOLOGY

This contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The contractor agrees that (1) all deliverables that involve IT that uses IP (products, services, software, etc.) comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for fielded product management, development and implementation available. If the contractor plans to offer a deliverable that involves IT that is not initially compliant, the contractor

agrees to (1) obtain the Contracting Officer's approval before starting work on the deliverable; and (2) have IPv6 technical support for fielded product management, development and implementation available. Should the contractor find that the PWS or specifications of this contract do not conform to IPv6 standards, it must notify the Contracting Officer of such nonconformance and act in accordance with the instructions of the Contracting Officer.

H.37 CRITICAL SUBCONTRACTORS – DESIGNATION AND CONSENT

The following subcontracts have been determined to be critical subcontracts:

Affiliate Procurements

Joint Venture or LLC Partner Procurements

All Non-Competitive Procurements exceeding \$1,000,000

Seconded Employee Agreements

The above subcontracts require notification to, and consent by, the Contracting Officer regardless of any exceptions that may be stated in the Subcontracts clause of this contract. Consent of these subcontracts is retained by the Contracting Officer and will not be delegated. The Contracting Officer may unilaterally designate additional subcontracts as "critical" without such action constituting a basis for adjustment to any other terms of the contract.

H.38 SALES AND USE TAXES

As a contractor on a contract issued by the DOE, the awardee will not be considered an agent of DOE. Based upon the decision of the State of New York Tax Appeals Tribunal in West Valley Nuclear Services Co., Inc., DTA No. 811511 (1998), the Contractor will have to pay sales and use taxes as required under Section 1116 (a) (2) of the New York State Tax Law on purchases of certain goods and services required under the contract.

H.39 CONFIDENTIALITY OF INFORMATION

- (a) To the extent that the work under this contract requires that the Contractor be given access to proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall after receipt thereof, treat such information as business-proprietary and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
 - (1) Information which, at the time of receipt by the Contractor, is in public domain;
 - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;

- (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
- (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.
- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer.
- (d) The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
- (e) This clause shall flow down to all appropriate subcontracts.

H.40 PERFORMANCE GUARANTEE AND RESPONSIBLE CORPORATE OFFICIAL

If the Contractor is a joint venture, limited liability company, other similar entity, or a newly formed entity, the Contractor's parent organization(s) or all member organizations shall guarantee performance of the contract as evidenced by the Performance Guarantee Agreement in Section J, Attachment J-9. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent(s) or all member organizations shall assume joint and several liability for the performance of the contract. In the event any of the signatories to the Performance Guarantee Agreement enter into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

Notwithstanding the provisions of this Clause, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the Contractor regarding Contractor performance issues:

Name: _____

Position: _____

Company/Organization: _____

Address: _____

Phone: _____

Facsimile: _____

Email: _____

Should the responsible corporate official change during the period of the Contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

H.41 RECOGNITION OF PERFORMING ENTITY

- (a) The Contractor and the Government recognize that the parties named below form the performing entity on which the award of this contract was based.

To be inserted at time of contract award

- (b) Accordingly, the Contractor and the Government agree that:

The Contractor shall take no action to replace the components of the Offeror named in (a) above without the prior written approval of the Contracting Officer.

H.42 TRANSITION TO FOLLOW-ON CONTRACT

The Contractor recognizes that the work and services covered by this contract are vital to the DOE mission and must be maintained without interruption, both at the commencement and the expiration of this contract. It is therefore understood and further agreed in recognition of the above:

That at the expiration of the contract term or any earlier termination thereof, the Contractor shall cooperate with a successor contractor or the Government by allowing either to interview its employees for possible employment, and if such employees accept employment with the replacement Contractor, shall release such employees at the time established by the new employer or by DOE. The Contractor shall cooperate with the replacement Contractor and Government with regard to the termination or transfer arrangements for such employees to assure maximum protection of employee service credits and fringe benefits.

H.43 MENTOR-PROTÉGÉ PROGRAM

- A) Both the U.S. Department of Energy (DOE) and the Small Business Administration (SBA) have established Mentor-Protégé Programs to encourage federal prime contractors to assist small businesses, firms certified under Section 8(a) of the Small Business Act by the SBA, other small disadvantaged businesses, women-owned small businesses, historically black colleges and universities and minority institutions, other minority institutions of higher learning, and small business concerns owned and controlled by service disabled veterans in enhancing its business abilities. Within 90 days of contract award and continuing throughout the contract period of performance, the contractor shall mentor at least one active Protégé company through the DOE and/or SBA Mentor-Protégé Programs. Mentor

and Protégé firms will develop and submit “lessons learned” evaluations to DOE at the conclusion of the contract.

- (B) DOE Mentor-Protégé Agreements shall be in accordance with DEAR Subpart 919.70, The Department of Energy Mentor-Protégé Program.
- (C) SBA Mentor-Protégé Agreements shall be in accordance with applicable SBA regulations.

H.44 SERVICES OF CONSULTANTS

- A. The term “Consultant” is defined as: a person possessing special current knowledge or skill that may be combined with extensive operational experience which enables them to provide information, opinions, advice, or recommendations to enhance understanding of complex issues or to improve the quality and timeliness of policy development or decision making.
- B. In addition to the provisions of the clause of this contract entitled “FAR 52.244-2 SUBCONTRACTS (JUN 2007), ALTERNATE I (JUN 2007)”, the prior written consent of the Contracting Officer also shall be obtained:
 - 1. For the utilization of services of any consultant under this contract exceeding the daily rates of \$75.00/hour, exclusive of travel costs; or
 - 2. Where the services of any consultant under this contract will exceed ten days in any calendar year, or exceed a total value of \$3,000.
- C. Whenever Contracting Officer written consent is required, the Contractor will obtain and furnish to the Contracting Officer information concerning the need for and selection of such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consulting services of a similar nature.

H.45 OVERTIME CONTROL PLAN

Notwithstanding any other provision in this contract, if the aggregate overtime premium pay as a percent (%) of base salary exceeds 2 % for non-represented employees or 10% for represented employees, the contractor shall submit to the Contracting Officer separate annual Overtime Control Plans in accordance with the Section I Clause entitled, FAR 52.222-2, Payment for Overtime Premiums.

H.46 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION

- (A) Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in a serious injury or death, including exposure to radiation and toxic/hazardous chemicals. Imminent Danger in relation to the facility safety envelope is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) nuclear criticality, (2) radiation exposure, (3) fire/explosion, and/or (4) toxic hazardous chemical exposure.

- (B) Work Stoppage. In the event of an imminent health and safety hazard, identified by facility line management or operators or facility health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (i.e., by directing the operator/implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public, and to protect U.S. Department of Energy (DOE) facilities and the environment. In the event an imminent health and safety hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate contractor official, who will direct the shutdown or other actions, as required. Such mitigating action should subsequently be coordinated with the DOE and contractor management. The suspension or stop-work order should be promptly confirmed in writing from the Contracting Officer.
- (C) Shutdown. In the event of an imminent danger in relation to the facility safety envelope or a non-imminent health and safety hazard identified by facility line managers, facility operators, health and safety personnel overseeing facility operations, or by independent oversight organizations, the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with contractor management, and the DOE West Valley Demonstration Project Manager. Any written direction to suspend operations shall be issued by the Contracting Officer, pursuant to the Section F Clause entitled, FAR 52.242-15, Stop-Work Order.
- (C) Facility Representatives. DOE personnel designated as Facility Representatives provide the technical/safety oversight of operations. The Facility Representative has the authority to “stop work,” which applies to the shutdown of an entire plant, activity, or job. This stop-work authority will be used for an operation of a facility which is performing work the Facility Representative believes:
- (1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;
 - (2) Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or
 - (3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.
- (E) This clause flows down to all subcontractors at all tiers. Therefore, the contractor shall insert a clause, modified appropriately to substitute “contractor representatives” for “the Contracting Officer” in all subcontracts.

H.47 EMERGENCY CLAUSE

- (A) The U.S. Department of Energy (DOE) WVDP Project Manager or designee shall have sole discretion to determine when an emergency situation exists at the West Valley site. In the event that either the DOE-WVDP Manager or designee determines such an emergency exists, the applicable DOE Manager or designee will have the

authority to direct any and all activities of the contractor and subcontractors necessary to resolve the emergency situation. The applicable DOE Manager or designee may direct the activities of the contractor and subcontractors throughout the duration of the emergency.

- (B) The contractor shall include this Clause in all subcontracts at any tier for work performed at the West Valley site.

H.48 WITHDRAWAL OF WORK

- (A) The Government may, at its option and during the performance of this contract, unilaterally have any of the work contemplated by Section C, Performance Work Statement, of this contract performed by either another contractor or to have the work performed by Government employees.
- (B) Work may be withdrawn:
 - (1) In order for the Government to conduct pilot programs;
 - (2) If the contractor's estimated cost of the work is considered unreasonable;
 - (3) For less than satisfactory performance by the contractor; or
 - (4) For any other reason deemed by the Contracting Officer to be in the best interests of the Government.
- (C) If any work is withdrawn by the Contracting Officer, the contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.

H.49 USE OF DOE FACILITIES

The contractor may conduct programs of local community assistance to mitigate adverse impacts of closure or reconfiguration of U.S. Department of Energy (DOE) facilities. Such programs may provide for the lease or transfer of DOE property at less than fair market value in accordance with the Hall Amendment (Public Law 103-160, Sections 3154 and 3155). The Contracting Officer must approve, in writing, prior to any lease or transfer of DOE property under this program. Any lease or transfer of property under this program must also be approved and executed (issued) by the DOE Certified Realty Specialist, as appropriate.

H.50 INFORMATION

- (A) Management of Information Resources. The contractor shall design and implement Information Resources Management (IRM) capabilities as required to execute this Contract in accordance with the Office of Management and Budget (OMB) Circular A-130, Management of Federal Information Resources.
- (B) Release of Information. The contractor shall provide timely, accurate, and complete responses to information requested by DOE to comply with Freedom of Information Act and Privacy Act requirements.

- (C) Unclassified Controlled Nuclear Information (UCNI). Documents originated by the contractor or furnished by the Government to the contractor, in connection with this contract, may contain Unclassified Controlled Nuclear Information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE regulations and directives and Section I Clauses entitled, DEAR 952.204-2, Security Requirements and DEAR 952.204-70, Classification/Declassification.
- (D) Confidentiality of Information. To the extent that the work under this contract requires that the contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
- (1) Information which, at the time of receipt by the contractor, is in the public domain;
 - (2) Information which is published after receipt thereof by the contractor or otherwise becomes part of the public domain through no fault of the contractor;
 - (3) Information which the contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
 - (4) Information which the contractor can demonstrate was received by it from a third party that did not require the contractor to hold it in confidence.

The contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access to such information, whereby the employee agrees that he/she will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the contractor's organization directly concerned with the performance of the contract.

The contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this subparagraph (d), with each company supplying information to the contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. Upon request from the Contracting Officer, the contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the contractor received such information.

The contractor agrees that upon request by DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by contractor personnel.

- (E) The Government reserves the right to require the contractor to include this Clause or a modified version of this Clause in any subcontract as directed in writing by the Contracting Officer.

H.51 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT RESPONSIBILITIES FOR CONTRACT TRANSITION PERIOD

All real and personal property currently accountable to the incumbent contractor for contract performance will be provided to the contractor. During the contract transition period, an inventory record of such property in the DOE Facilities Information Management System (FIMS) and current contractor's personal property databases will be provided to the contractor. Specifically, the following property acceptance requirements will be implemented:

- (A) The contractor shall perform a joint wall-to-wall physical inventory with the current contractor(s) of all accountable high-risk and sensitive property during the transition period and accept full accountability for the high-risk property at the end of transition.
- (B) The contractor must accept, at the end of transition, transfer of accountability for the remaining government-owned real and personal property not covered under paragraph (1), based on existing inventory records, on an "as-is, where-is" basis, or perform a wall-to-wall inventory within 120 calendar days of the effective date of the Contract. Any discrepancies from the existing inventory records shall be reported to the CO. As the formal inventories are completed, the contractor shall assume responsibility and liability for subsequent losses and damages. If the physical inventory is not accomplished within the allotted time frame, the previous contractor's records will become the inventory baseline.

H.52 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- (A) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; (5) the character of equipment and facilities needed preliminary to and during work performance; and (6) the general condition of the process buildings and their contents. The Contractor also acknowledges that it has satisfied itself as to the general character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the technical documentation made available and specifications made a part of this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

- (B) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

H.53 PARENT ORGANIZATION SUPPORT

- (A) For on-site work, U.S. Department of Energy (DOE) fee generally provides adequate compensation for parent organization expenses incurred in the general management of this contract. The general construct of this contract results in minimal parent organization investment (in terms of its own resources, such as labor, material, overhead, etc.) in the contract work.

Accordingly, allocations of parent organization expenses are unallowable for the prime contractor, major subcontractors, and/or teaming partners, unless authorized by the Contracting Officer in accordance with this Clause.

- (B) The contractor may propose, or DOE may require, parent organization support to:
- (1) Monitor safety and performance in the execution of contract requirements;
 - (2) Ensure achievement of contract environmental clean-up and closure commitments;
 - (3) Sustain excellence of contract key personnel;
 - (4) Ensure effective internal processes and controls for disciplined contract execution;
 - (5) Assess contract performance and apply parent organization problem-solving resources on problem areas; and
 - (6) Provide other parent organization capabilities to facilitate contract performance.
- (C) The Contracting Officer may use unilateral discretion to authorize parent organization support and the corresponding indirect or direct costs. All parent organization support shall be authorized in advance by the Contracting Officer.
- (D) If parent organization support is proposed by the contractor or required by DOE, the contractor shall submit for DOE review and approval, an annual *Parent Organization Support Plan* (POSP). The Contractor shall submit its initial POSP 30 days prior to: (1) the end of the Contract *Transition Period*; or (2) the commencement date of parent organization support proposed by the contractor or required by the Government. Any subsequent POSP shall be submitted 90 days prior to the start of each year of contract performance.

H.54 SALE OF PERSONAL PROPERTY

If the contractor acquires property under this contract that is later determined to be excess/surplus property and the contractor receives approval from the Contracting Officer to sell such property, the proceeds from the sale shall be handled as a credit to the contractor's contract cost. The contractor shall issue a credit on its voucher that is submitted to the U.S. Department of Energy for reimbursement of cost documenting the sale of such property.

H.55 SELF-PERFORMED WORK

Unless otherwise approved in advance in writing by the Contracting Officer, the percentage of work which may be self-performed by the large business(es) of the Contractor team arrangement (as described in *FAR 9.6, Contracting Team Arrangements*), shall be limited collectively to not more than 40 percent (%) of the *Total Contract Cost*. If a small business is a member of the Contractor Team arrangement, the small business portion will be a part of the overall small business subcontracting goal. Unless otherwise approved in advance by the Contracting Officer, work to subcontractors outside of the Contractor team arrangement shall be performed through competitive procurements after contract award, with an emphasis on fixed-price subcontracts.

H.56 CONTRACT CLOSE-OUT

The Contractor shall submit a separate plan including budget and schedule for close-out of the contract 60 days prior to the end of the period of performance as specified in Section F clause entitled "Period of Performance". The Contract Close-Out Plan will be incorporated into Section J as Attachment J-11 and shall include all remaining administrative matters necessary to close out the contract, including but not limited to: resolution of remaining and open litigation; audit of indirect costs; remaining records disposition required by the Government; or any other activities required by Section I, FAR 52.216-7, "Allowable Cost and Payment."

H.57 PARTNERING

In order to most effectively accomplish this Contract, the Government proposes to form a cohesive partnership with the Contractor. It is a way of doing business based upon trust, dedication to common goals, and an understanding and respect of each other's expectations and values. The process creates a teambuilding environment which fosters better communication and problem solving, and a mutual trust between the participants. These key elements create a climate in which issues can be raised, openly discussed, and jointly settled, without getting into an adversarial relationship. In this way, partnering is a mindset, and a way of doing business. It is an attitude toward working as a team, and achieving successful project execution. This endeavor seeks an environment that nurtures team building cooperation, and trust between the Government and the Contractor. The partnership strives to draw on the strengths of each organization in an effort to achieve a quality project done right the first time, within budget, and on schedule.

Participation in the partnership will be totally voluntary by the parties. Any cost associated with effectuating this partnership will be agreed to by both parties during Contract performance. The U.S. Army Corps of Engineers has championed partnering and their

guidelines will be utilized in organizing partnering meetings and establishing a partnering agreement.